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EXAMINER

PUROL, DAVID M

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER F. FREUDENBERG,
WILLIAM J. FREUDENBERG, DAVID E. LEVASSEUR,
EUGENE L. BARATTO, CURTIS L. LARSON, and JOHN A. HARRISON

Appeal 2009-006401
Application 10/722,041
Technology Center 3600

Decided: March 30, 2010

Before JENNIFER D. BAHR, JOHN C. KERINS, and
STEFAN STAICOVICI, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Christopher F. Freudenberg et al. (Appellants) appeal under 35 U.S.C. § 134 (2006) from the Examiner's decision rejecting claims 1, 2, 6, 7, 12-21, 23-27, 29, 30, 33, and 34. Claims 3-5, 8-11, 22, 28, 31, 32, and 35-37 have been cancelled. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2006).

THE INVENTION

Appellants' invention relates to a method and device for creating an enclosure to define a contained space including plastic sheeting having an adhesive that substantially covers a major surface of the plastic sheeting. Spec. 1, ll. 10-12 and 7, ll. 19-20.

Claim 1 is representative of the claimed invention and reads as follows:

1. A method for creating at least a partially enclosed space and controlled environment for abatement of physical material within a preexisting structure, the enclosed space being based at least in part on structural elements of the preexisting structure comprising:

- attaching at least first and second barrier sheet lengths comprising separate lengths of flexible polymeric film in a sealed overlapping relationship to one another to a first surface of a first structural element of the preexisting space and attaching the overlapping barrier sheet lengths to a second surface of a second structural element of the preexisting space while at least partially covering an opening between the first and second surfaces for creating a barrier as part of an enclosure of a desired space with a controlled

environment, said step of attaching at least the first and second barrier sheet lengths including using a holding system of each of the first and second barrier sheet lengths that extends over major surfaces thereof, wherein the holding system comprises an adhesive layer that substantially covers a major surface of each of the first and second barrier sheet lengths including an edge zone and an intermediate zone of the same major surface, so that the first barrier sheet length with the holding system is secured to the first surface of the first structural element at both the edge and intermediate zones and the second barrier sheet length with the holding system is adhesively sealed to an overlapping portion of the first barrier sheet length and the first surface of the first structural element.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Eller	US 5,090,972	Feb. 25, 1992
Iwen	US 6,355,323 B1	Mar. 12, 2002

Appellants seek review of the Examiner's rejection of claims 1, 2, 6, 7, 12-21, 23-27, 29, 30, 33, and 34 under 35 U.S.C. § 103(a) as unpatentable over Iwen and Eller.

THE ISSUE

Each of independent claims 1, 21, and 34 requires an adhesive layer that “substantially covers” a major surface of the plastic sheeting. Appellants argue that neither Iwen nor Eller “discloses or suggests the provision of an adhesive layer that *substantially covers a major surface* of any barrier

sheet.” App. Br. 15. Emphasis added. In response, pointing to columns 3 and 4 of Iwen, the Examiner notes that the barrier sheet of Iwen may include additional strips of adhesive positioned anywhere lengthwise on one or both sides of the sheet, that is, “at the side ends or top and bottom edges of the side sheet.” Ans. 6. Appellant counters that Iwen merely “contemplates distinct strips or areas of adhesive that can be provided in select locations.” App. Br. 15. Hence, the dispositive issue in the instant appeal is whether Iwen discloses an adhesive layer that “substantially covers” a major surface of the plastic sheeting, as required by each of independent claims 1, 21, and 34.

SUMMARY OF DECISION

We REVERSE.

OPINION

When a word of degree, such as the term “substantially,” is used in a claim, we look to the specification to determine whether the specification provides some standard for measuring that degree. *See Seattle Box Co., Inc. v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 826 (Fed. Cir. 1984). In this case, Appellants’ Specification describes that depending on the application, the adhesive may cover up to about 20%, at least 50%, at least 80%, at least 90%, and sometimes “*substantially* all of one major surface.” Spec. 7, ll. 7-20. Emphasis added. Accordingly, in view of Appellants’ Specification, we construe the phrase “substantially covers” to mean that the adhesive covers considerably more than 90% of at least one major surface of the plastic sheeting. It is our finding that Iwen discloses a barrier sheet 10

having an adhesive strip 32.¹ Iwen, col. 3, ll. 18-21 and fig. 1A. Like the Examiner, we find that Iwen discloses positioning multiple adhesive strips at predetermined distances from the top and bottom edges of the sheet, at the side ends, or at the top and bottom edges of the side sheet. Iwen, col. 3, ll. 44-50 and col. 4, ll. 8-10. *See also* Ans. 6. However, although we appreciate the Examiner's position that Iwen discloses a plurality of adhesive strips, nonetheless, we could not find any portion in Iwen, and the Examiner has not pointed to any portion, which discloses that the adhesive strips *substantially cover*, that is, cover considerably more than 90%, of at least one major surface of the plastic sheeting. In other words, we find that, just because Iwen discloses multiple adhesive strips, it does not mean that considerably more than 90% of Iwen's barrier sheet is covered by the adhesive strips. Moreover, we note Iwen's use of the term "strip," which we find to imply to a person of ordinary skill in the art to be the use of *narrow* portions or regions of adhesive to cover a surface in distinct areas or regions at select locations.

In conclusion, we agree with Appellants that Iwen does not disclose an adhesive layer that "substantially covers" a major surface of the plastic sheeting, as required by each of independent claims 1, 21, and 34. The disclosure of Eller does not remedy the deficiency of Iwen as discussed above. Accordingly, we will not sustain the rejection of claims 1, 21, and 34 or their dependent claims 2, 6, 7, 12-20, 23-27, 29, 30, and 33 under 35 U.S.C. § 103(a) as unpatentable over Iwen and Eller. *See In re Fine*, 837

¹ An ordinary and customary meaning of the term "strip" is "a long *narrow* piece of a material." MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (10th Ed. 1997). Emphasis added.

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F.2d 1071, 1076 (Fed. Cir. 1988) (If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim dependent therefrom is nonobvious).

CONCLUSION

Iwen does not disclose an adhesive layer that “substantially covers” a major surface of the plastic sheeting, as required by each of independent claims 1, 21, and 34.

DECISION

The Examiner’s decision to reject claims 1, 2, 6, 7, 12-21, 23-27, 29, 30, 33, and 34 is reversed.

REVERSED

Klh

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